

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIMOTHY J. WESTHOFF	:	CIVIL ACTION
	:	
v.	:	NO. 09-501
	:	
ERICKA T. MORAN, et al.	:	

**ORDER**

And now this 13<sup>th</sup> day of May, 2009, upon careful and independent review of the petition for a writ of habeas corpus, it is hereby ORDERED that:

1. The Report and Recommendation of Magistrate Judge L. Felipe Restrepo is APPROVED and ADOPTED;<sup>1</sup>
2. The petition for a writ of *habeas corpus* is DENIED with prejudice;
3. There is no probable cause to issue a certificate of appealability; and,
4. The Clerk of the Court shall mark this case closed for statistical purposes.

BY THE COURT:

\s\ Juan R. Sánchez  
Juan R. Sánchez

J.

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<sup>1</sup>Magistrate Judge Restrepo's thorough Report properly recommended denying Petitioner's writ because he was not in custody as required by 28 U.S.C. § 2254 for the incarceration he was challenging, but was in custody on an unrelated matter. Petitioner is no longer in custody on any matter; thus, habeas review is not even arguably available to him. *Barry v. Bergen County Probat'n Dept.*, 128 F.3d 152, 160 (3d Cir. 1997).